



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT E. WATSON)

Appearances:

For Appellant: Robert E. Watson,
in pro. per.

For Respondent: Allen R. Wildermuth
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Robert E. Watson against proposed assessments of additional personal income tax and penalties in the total amounts of \$11,511.92, \$17,057.10, \$19,966.17, \$23,466.79, \$27,233.67, \$31,368.86 and \$33,709.43 for the years 1973, 1974, 1975, 1976, 1977, 1978 and 1979, respectively.

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The sole issue for determination is whether appellant has established any error in respondent's proposed assessments of personal income tax and penalties.

For the years at issue, appellant, a self-employed physician, filed returns disclosing no information concerning his income, deductions or credits. The spaces on the return were filled in with the words "object" and "object: self-incriminating." Respondent notified appellant that those returns were not valid and demanded that appellant file returns containing necessary information. Appellant failed to file the demanded returns. Respondent then estimated appellant's income using gross receipts information available from appellant's state income tax returns for 1969 and 1970 and included a 15 percent growth and inflation factor for each year over the prior two years' earnings. Although appellant's returns for prior years contained deductions in excess of the standard deduction, respondent used the standard deduction in computing appellant's taxes for the years at issue because appellant had provided no information regarding deductions. Respondent issued notices of tax proposed to be assessed for the estimated amounts of tax plus penalties for failure to file a return (Rev. & Tax. Code, §18681), for failure to file a return after notice and demand (Rev. & Tax. Code, §18683), for negligence (Rev. & Tax. Code, §18684), and for failure to pay the estimated tax (Rev. & Tax. Code, section 18685.05).

It is well settled that respondent's determinations of tax and the penalties involved in this appeal are presumptively correct, and the burden is on the taxpayer to prove them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) Furthermore, where the taxpayer files no return or otherwise refuses to cooperate in the ascertainment of his income, respondent has great latitude in determining the amount of tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980).)

Appellant makes a blanket contention that he does not have to submit a valid return on basis of the Fifth Amendment privilege against self-incrimination. We have considered similar self-incrimination arguments against respondent's proposed assessments several times

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before and have invariably rejected them. We reject appellant's argument here also without repeating our views on the matter since those views are set forth in previous opinions. (See Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982, and the appeals cited therein.)

Specifically, appellant's argument that he cannot be forced to reveal the amount of his income is not an argument which attacks the accuracy of respondent's estimations of that income. It also does not alter the fact that he is legally obligated to pay his fair share of the tax. On basis of further review, respondent determined that the proposed assessments should be adjusted to reflect a 10 percent growth and inflation factor rather than a 15 percent factor. The proposed assessments will be modified in accordance with this concession.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert E. Watson against proposed assessments of additional personal income tax and penalties in the total amounts of \$11,511.92, \$17,057.10, \$19,966.17, \$23,466.79, \$27,233.67, \$31,368.86 and \$33,709.43 for the years 1973, 1974, 1975, 1976, 1977, 1978 and 1979, respectively, be and the same is hereby modified in accordance with respondent's concession concerning the 10 percent growth and inflation factor. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman
Ernest J. Dronenburg, Jr. , Member
-Richard Nevins , Member
_____, Member
- - - - , Member